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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,636	10/15/2001	William P. Apps	RPC 0554 PUS	4010
33171	7590	10/28/2003		
KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3727	PAPER NUMBER
			DATE MAILED: 10/28/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/977,636

Applicant(s)

APPS ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8,10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22, 23, 26, 28-30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 recites the limitation "the bottle support area oriented at a corner of the floor member" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim because it can't be determined which of the four corners is meant.

Claim 23 recites the limitation "the a nesting projection" in the phrase bridging lines 10 and 11. There is insufficient antecedent basis for this limitation in the claim because applicant has placed two articles ("a" and "the") before the word "nesting." It can't be determined if applicant is claiming a new element or if applicant is referring back to the projection member.

Claim 26 recites the limitation "the first inner surface" in the phrase bridging lines 7 and 8. There is insufficient antecedent basis for this limitation in the claim because it can't be determined which of the first inner surfaces is meant.

Claim 26 recites the limitation "the first outer surface" in the phrase bridging lines 8 and 9. There is insufficient antecedent basis for this limitation in the claim because it can't be determined which of the first outer surfaces is meant.

Claim 28 recites the limitation "the bottle contact surface" in the second to last line. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-16, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. (5,651,461) and Apps et al. (5,842,572).

Both Apps references have a substantially similar disclosure. These references show a nestable crate for bottles comprising a floor portion, a low-depth wall structure with a peripheral extending upper band (that portion which extends above the line delineating the upper edge of the lower wall portion 56 as shown in Fig. 1) having an interior surface with concave bottle contact portions (between the pylons 58), the wall structure also having a single-walled lower wall construction (the inner wall only) which includes adjacent column members (directly below each of the pylons 58) each having concave facing surfaces, the pylons of the upper band form nesting members which are received within the column members of an upwardly nested crate, a window is defined by the upper band at the top and by an adjacent pair of columns at the sides. The innermost surface of the spaced-apart interior projections on pylons 58 defines a first plane and the side of the pylon 58 which is adjacent to the recess 44 defines a second plane offset from the first plane.

Claims 23 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps (5,184,748).

Re claim 23, Apps ('748) discloses a low-depth nestable bottle crate comprising: a floor member, an upper wall member and a lower wall portion, the upper wall member having spaced apart projection members and bottle contact surfaces between the projection members on its inner surface, the projection member provides nesting engagement with a crate nested from

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below, the lower wall portion is disposed along a plane offset inwardly from the projection members and has support members which extend from the projection members and connect the floor member to the upper wall member.

Re claim 25, Apps ('748) discloses the nestable crate assembly comprising: first and second bottle crates, the first bottle crate is nested within the compartment of the second bottle crate, the projection members are equivalent to the spaced-apart inwardly extending portions explained above.

Re claims 26 and 27, Apps ('748) discloses the upper wall portion as being equivalent to the upper wall member mentioned above, the columns are the support members explained above, the interior projections are the projection members explained above, these projections define first inner surfaces and a first planar outer surface is defined by the outer edge adjacent to the upper edge surface, the bottle contact surfaces define a second inner surface and the portion outwardly opposed to the bottle contact surface defines a second outer surface recessed relative to the first outer surface.

Re claim 28, the outer surface of the endwalls is either the upper edge surface or the outer edge surface adjacent to the upper edge surface.

Re claim 30 the opening between two columns at the endwall and between the upper band and the floor defines a handle opening, note that only two columns and one window are required and that they are located in the sidewall.

Claims 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalin (D361,663).

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Kalin discloses a nestable crate comprising: a floor, an upper wall portion and a lower portion, the upper wall portion having an inner surface, the inner surface including spaced-apart interior projections and bottle contact surfaces between the projections, the upper end walls include handle areas defined by a handle opening with upper and lower handle members, the lower portion having a plurality of columns, the columns extend inwardly from some of the portions of the interior projections, the columns have a first later edge and a second lateral edge.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. (5,651,461) and Apps et al. (5,842,572) in view of Kalin (D361,663) and Hammett (5,421,477).

The Apps references disclose the invention except for handle opening. Both Apps references disclose bar handles at the end walls. Kalin and Hammett (see Fig. 21) disclose handle openings in the upper band portion of the end walls. It would have been obvious to modify the bar handle to be a handle opening in the end walls of the upper band in order to provide the convenience of inserting a hand to grasp a crate as opposed to the gripping of a bar.

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps (5,184,748) in view of Koefeldt (5,465,843).

Apps ('748) discloses a low-depth nestable bottle crate comprising: a floor member, a generally upright band member spaced apart from the floor member and spaced-apart nesting columns, the upright band member having upper inwardly-extending portions and bottle contact

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surfaces between the inwardly-extending portions on its inner surface, the columns including first and second opposed inner surfaces defining a vertical recess on the column outer surface. Apps discloses the invention except for the transition ledge. Koefeldt teaches a transition ledge as top edge 78 (shown in Fig. 14) between the upper inwardly-extending portion (72) and the column (70, 74, 76).

Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc